

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Roanoke Division

TERRENCE A. HARVEY, #1003606

Plaintiff,

v.

CASE NO. 7:17-cv-00113

J. HALL, *et al.*,

Defendants.

AFFIDAVIT

State of Virginia, County of Wise, to-wit:

J. FANNIN, first being duly sworn, states as follows:

1. I am a Corrections Lieutenant and the Institutional Investigator at Red Onion State Prison ("Red Onion").
2. The information contained in this affidavit is based on personal knowledge and records maintained in the regular and ordinary course of business.
3. I was working as the Institutional Investigator at Red Onion on June 10, 2016. At this time, Red Onion was using the rapid eye video surveillance system. Rapid eye cameras generally do not provide a view into the cells, and the video does not contain audio. The cell doors are solid with a narrow vertical shaped window which does not allow a full view into the cell. In the routine course of business, the rapid eye cameras capture a view of activities in the housing unit including offender and staff movement. During an incident, central control and a limited number of authorized staff members may zoom a camera to a particular cell or area in the housing unit to capture a closer view of the area. Incidents occurring inside a cell are usually not

captured clearly. Therefore, a hand held camera may be used by staff at the cell during an incident.

4. When an offender writes a grievance in which he requests the retention of video, a copy of the grievance is sent to Intelligence Staff at Red Onion, and those staff then use their discretion to determine whether additional specifying information is needed from the offender concerning dates and times of the requested video. The offender may be contacted to provide this information. If the offender does not respond, the video is not retained. Red Onion has limited storage space for the retention of video, so short clips of video are kept. Red Onion does not have the storage capacity or manpower to record hours of video for retention.

5. I have checked the file that I have for Harvey in the Intelligence Office and the only request that I have regarding a request for the retention of video regarding Harvey is an offender request that he wrote on September 25, 2018. I responded to the request on September 27, 2018 stating that there was not video retained for him regarding an incident on June 10, 2016. I did not receive a notification from the Institutional Grievance Office regarding retention of June 10, 2016 video for Harvey. A copy of the September 27, 2018 Offender Request is attached as Enclosure A.

6. On June 10, 2016, Harvey was housed in cell C-215. The rapid eye camera that would have captured this cell was a fixed camera in the front of the housing unit. While the camera footage would have likely shown the officer standing in front of the cell, it would not have been possible to see the status of the tray slot or the slider on the cell door. As the cell door would have also been closed because meals were being served, the offender could not be seen inside the cell except through the vertical window on the cell door.

7. The rapid eye system routinely recorded over video in the normal course of business. The Intelligence Office had the capability of saving clips or excerpts of rapid eye video. While select individuals such as the Warden, Assistant Warden and Housing Unit Managers had the capability of reviewing video from their desktop computers, to my knowledge, only the intelligence office had the capability of saving clips from rapid eye video. Video is not retained by staff in the offender housing units. Correctional officers and sergeants do not have access to Red Onion's video surveillance system.

8. Video is retained in the ordinary course of business when there is an incident with an offender. There are no incident reports regarding an incident between Officers Blankenbeckler and Hall and offender Harvey on June 10, 2016. Therefore, Red Onion's Intelligence Office would have no knowledge of the alleged incident. I have video clips of other incidents from June 2016, but not for Harvey. He did not write to the Red Onion Intelligence Office about the retention of video for June 10, 2016 until September 25, 2018. At this time, more than 90 days had passed and the video was recorded over.

J. FANNIN

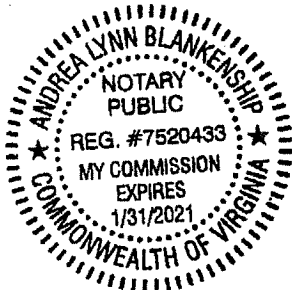
J. Fannin
Affiant

Sworn and subscribed to before me, a Notary Public, in and for the State of Virginia, County of Wise, on this 19 day of December, 2018.

Andrea Blankenship
Notary Public

My commission expires:

Jan 31, 2021





VIRGINIA
DEPARTMENT OF CORRECTIONS

Offender Request 801_F3_7-12

Offender Request (RCSP)

DIRECTIONS

1. Fill in your Name, Number, Full Housing Assignment
2. Please Print your request; **KEEP IT BRIEF**
3. Drop in the appropriate Mail Box

4. Requests may be returned unanswered if addressed to the wrong department or if duplicate requests are sent.

YOUR LAST NAME	FIRST	MI	NUMBER	BLDG/CELL
Harvey	Terrance	A.	10036000	D5-15
WORK ASSIGNMENT	ASSIGNED COUNSELOR		TODAY'S DATE	
Barber	Ana, P. Sykes		9/25/18	

TO: ☐ Unit Manager ☐ Medical ☐ Personal Property ☐ Law Library ☐ Security
☐ Treatment ☐ Mental Health ☐ Education ☐ Enterprise Shop ☐ Accounting
☐ Chaplain ☐ Assistant Warden ☐ Warden ☒ Other Intell Dept. (RCSP)

CHECK PURPOSE ☐ Appointment Request ☒ Question/Statement

RCSP Investigator, Fannin & Intell Officer Bartly:
 It was ordered by the 13 District Court Judge for me to request the ~~video~~ video footage of June 10, 2016, 2:40 am through 4:50 am; if the footage still exist. "I did" request for this footage to be saved via Grievance (RCSP-2016-00285) 8/12/16. To the extent rather this Rapid Eye Video Footage still exist; please make it available to the court via AAG. MS. Mary Grace Miller (804) 225-4021. Thank you! Please respond to this request as soon as possible.

DO NOT ATTACH ADDITIONAL PAGES; DO NOT WRITE BELOW THIS LINE

RESPONSE

Request sent to correct department ☐ Yes ☐ No; Routed to: _____ Date: _____

Mr. Harvey,
 I have checked and there was no video saved on this particular day. I never received no paperwork from you requesting this video saved.

Enclosure A

Offender seen ☐ Yes ☐ No

lt J. Fann
 Official Responding

9/27/18
 Date of Response